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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,938	07/11/2003	Gary A. Rocheleau	239580US-25 CONT	3027
22850	7590	01/10/2005		EXAMINER
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			GILBERT, SAMUEL G	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

87V

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/616,938	ROCHELEAU ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Samuel G. Gilbert	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 October 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 11 is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) 12 and 13 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.   |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 10 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Semrad (5,234,438) Semrad teaches a connector -20- for connecting a suture to a catheter. It is the examiner's position that the connector is capable of being used in the manner as claimed and that none of the structure of the needle has been claimed. The separation force requires both elements a coupler and a needle to determine. In the instant case the claim is directed to only the subcombination of a coupler and the separation force as set forth in the claim would only be present after the coupler is connected to the needle. Therefore it is the examiner's position that the coupler of Semrad is inherently capable of providing a separation force of at least 15 pounds if an appropriate catheter is selected. Because the claim is directed to only the subcombination of the coupler and a separation on force as set forth in the claims can

only be defined for a proposed future combination the examiner is not taking the separation force to be limiting.

Further in the last paragraph on page 9 the applicant argues that “the attachment in Semrad is different from the present invention and , resultantly, less secure than the present invention. ... The present invention, however, shows different structure that would likely result in a stronger connection”. The examiner agrees that the non-limiting example pointed to by the applicant is different than the structure of Semrad however, the claimed structure is not limited to the structure provided by the example pointed to by the applicant, as specifically pointed out by the applicant.

Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Lehe et al (6,273,852).

Lehe et al teaches needle -10- having a blunt end -16-, sling -12- and connector -32-, the examiner is taking material -13-, which can be placed over synthetic material -11- as a sheath and the sheath is attached to connector -32-. Element -16- is a blunt tip, column 4 , line 48.

Claim 7 – is replete with functional language that does not require any structural difference from Lehe et al. The device of Lehe et al. is capable of performing the recited function.

Claim 10 - the examiner is taking the body of element -32- to be elongated having first and second ends. The examiner is taking elements -33- and -33a- as surfaces for securing the connector to a needle. The claim does not include a needle

so the examiner is taking the connection in an axial direction as functional language of intended use, and taking the position that the connector -32- is capable of being used with a needle having an axial alignment configuration. The separation force would be the smaller of the breaking force of the connector or sling which the examiner is taking to be inherently greater than about fifteen pounds.

The insertion force in these types of connectors is generally very small and would be within the claimed ranges.

#### ***Response to Arguments***

Applicant's arguments filed 10/15/2004 have been fully considered but they are not persuasive. Regarding the rejection over Lehe the applicant argues that Lehe fails to teach a coupler. The examiner is taking element -32- as a coupler. The applicant argues that the connector -32- does not have two ends because one of the connectors ends is connected to the sling and sheath. It is the examiner's position that the connector/coupler -32- has two ends even if one is connected to the sling. The applicant also argues that the connector of Lehe does not functionally connect to the insertion end of the needle by moving the connector and the insertion end of the needle together. The examiner is taking the position that the connector and the needle must be moved together to form the connection and the connection is formed on the insertion end on the needle. The applicant's attention is invited to figures 5d and 5e. In figure 5d the needle is shown with lead line -10-. It is the examiner's position that the portion of the needle between the lead line -10- and the distal tip shown generally at -40- is the insertion end of the needle.

***Allowable Subject Matter***

Claim 11 is allowed.

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Thursday 6:30-9:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenberg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Samuel G. Gilbert  
Primary Examiner  
Art Unit 3736

sgg